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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY
236 Massachusetts Avenue, NE
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Washington, DC 20002

October 10, 2002

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of Valor Telecommunications, LLC Petition for Waiver of
Section 61.41 of the Commission's Rules, WCB/Pricing 02-26

Dear Ms. Dortch:

Please find attached the original and five copies of the comments submitted by the United States Telecom Association in the above referenced matter. Please date stamp the fifth copy and return to me via the delivering courier. Please contact me if you have any questions.

Sincerely,

Robin E. Tuttle

Robin E. Tuttle
Associate Counsel

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
)	
Valor Telecommunications, LLC)	
Petition for Waiver of Section 61.41)	WCB/Pricing 02-26
Of the Commission's Rules)	
_____)	

**COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to the *Public Notice* released by the Federal Communications Commission's (FCC's or Commission's) Wireline Competition Bureau (WCB)² and pursuant to sections 1.415 and 1.419 of the Commission's rules,³ hereby submits its comments on the Valor Telecommunications, LLC Petition for Waiver of Section 61.41 of the Commission's Rules (Petition). In its Petition, Valor Telecommunications, LLC (Valor) requests a temporary waiver of the price cap "all-or-nothing" rule set forth in Sections 61.41(b) and 61.41(c)(2) of the Commission's rules,⁴ which would permit its wholly-owned subsidiary, Kerrville Telephone Company (Kerrville), to continue to be governed under rate-of-return regulation while Valor would continue to be governed under price cap regulation. Valor also notes that this temporary waiver would preserve the *status quo*, pending the Commission's completion of its review of the price cap "all-or-

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² *Public Notice*, WCB/Pricing 02-26, DA 02-2302 (rel. Sept. 18, 2002) soliciting comment on the Valor Telecommunications, LLC Petition for Waiver of Section 61.41 of the Commission's Rules.

³ 47 C.F.R. §§1.415 and 1.419.

⁴ See 47 C.F.R. §§61.41(b) and 61.41(c)(2).

nothing” rule in the *Rate-of-Return Access Charge Reform Further Notice*.⁵ USTA urges the Commission to grant the Petition.

DISCUSSION

USTA filed comments jointly with the National Rural Telecom Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies in the *Rate-of-Return Access Charge Reform Further Notice* proceeding, opposing the imposition of one-size-fits-all regulation on differently regulated carriers that become affiliated after a merger or acquisition because such regulation results in inefficient operation of either the acquiring or acquired carrier and causes carriers to refrain from engaging in pro-competitive mergers and acquisitions.⁶

In its Petition, Valor seeks relief that would allow it and Kerrville to operate efficiently under the regulatory regime that best suits each carrier’s conditions and characteristics – *i.e.*, price cap regulation for Valor and rate-of-return regulation for Kerrville – at least until the Commission issues an order in the *Rate-of-Return Access Charge Reform Further Notice* proceeding. This type of limited relief has been granted recently by the Commission in response to several different requests by carriers, including requests that involve the acquisition of a price cap carrier by a rate-of-return carrier and the acquisition of a rate-or-return carrier by a price cap

⁵ See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order and CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) (*Rate-of-Return Access Charge Reform Further Notice*).

⁶ See NRTA, OPASTCO, and USTA Comments, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket Nos. 00-256, 96-45, 98-77, 98-166 at 9 (Feb. 14, 2002) (Joint Comments on Rate-of-Return Access Charge Reform Further Notice).

carrier.⁷ Notably when the Commission recently granted such relief it stated that it does “not believe the public interest would be served by requiring [the acquiring carrier] . . . to undertake the burdens of converting [its] . . . acquired exchanges [to a different regulatory regime] . . . based on a rule that may be modified on [sic] eliminated in the near future.”⁸ The same public interest concern exists for Valor and Kerrville as existed for other carriers for which the Commission has granted a temporary waiver; Valor and Kerrville should be treated no differently from these other carriers.

USTA notes that the Commission has granted numerous other requests for waivers from compliance with the “all-or-nothing” rule, from which it can be concluded that the concerns that prompted the implementation of the “all-or-nothing” rule – fear of abuses such as gaming the system, price shifting between study areas, and predatory pricing – have not materialized. Certainly, there are other regulatory safeguards that prevent or allow detection and correction of any such abuses by carriers that become affiliated either through mergers or acquisitions, specifically state and federal tariff processes and Commission rules on accounting, separations, cost accounting manuals, affiliate transactions, complaints, and regulated and unregulated services.⁹ Equally constraining on the ability of differently regulated, affiliated carriers to commit such abuses, particularly cost shifting, is the emergence and significant growth of wireless competition.¹⁰ This competition provides such affiliated carriers with no safe harbor to recover shifted costs. Accordingly, the Commission should refrain from applying the “all-or-

⁷ See *ALLTEL Corporation Petition for Waiver of Section 61.41, ALLTEL Corporation Petition to Extend Interim Waiver of Section 61.41 of the Commission's Rules, CenturyTel, Inc. and CenturyTel of Alabama, LLC Petition for Waiver of Sections 61.41(b) and (c) of the Commission's Rules, CenturyTel, Inc. and CenturyTel of Missouri, LLC Petition for Waiver of Sections 61.41(b) and (c) of the Commission's Rules, Puerto Rico Telephone Company Petition for Waiver of Section 61.41 of the Commission's Rules or, in the Alternative, Request for Waiver of Section 54.303(a) of the Commission's Rules*, Memorandum Opinion and Order, CCB/CPD Nos. 01-28, 99-01, 01-36, 01-30, 99-36 (rel. Apr. 18, 2002) (*ALLTEL, CenturyTel, and Puerto Rico Telephone Waiver Order*).


⁸ See *ALLTEL, CenturyTel, and Puerto Rico Telephone Waiver Order* at ¶8.

nothing” rule to differently regulated carriers that become affiliated after mergers or acquisitions and handle any abuses, if they occur, through enforcement.

For these reasons, USTA urges the Commission to grant the temporary waiver requested in the Valor Petition and reiterates its recommendation stated in the Joint Comments on Rate-of-Return Access Charge Reform Further Notice that the Commission repeal the “all-or-nothing” rule.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By: 

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⁹ See Joint Comments on Rate-of-Return Access Charge Reform Further Notice at 9-12.

¹⁰ See *id.* at 12.